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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	RECEIVED
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Application by Verizon New Jersey, Inc. et al.,	)	APR 0 8 2002
Pursuant to Section 271 of	)	WC Docket No. 02-67
the Telecommunications Act of 1996	)	FEDERAL COMMUNICATIONS COMMISSION
to Provide In-Region, InterLATA Services	)	OFFICE OF THE SECRETARY
In New Jersey	)	

To: The Commission

COMMENTS OF
NATIONAL ALEC ASSOCIATION/
PREPAID COMMUNICATIONS ASSOCIATION

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April 8, 2002

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Executive Summary

Verizon has failed to demonstrate both that it has fully complied with the 14-point "Competitive Checklist" and that the requested authorization is consistent with the public interest, convenience and necessity. Accordingly, the Commission should deny Verizon's Section 271 application to provide in-region interLATA services in New Jersey.

Contrary to its declarations, Verizon's billing performance fails to satisfy Item 2 of the Competitive Checklist. Verizon's billing performance data reveals substandard performance and skewed results based on the exclusion of post-completion discrepancies ("PCDs"). Other areas of critical concerns to resellers, including dispute acknowledgement and resolution, are not even addressed. And while Verizon may have resolved some billing concerns, it is creating new ones. A recently adopted billing policy demonstrates both Verizon's continuing monopoly power and its willingness to exercise that power anti-competitively.

Verizon also fails to satisfy Item 14 of the Checklist. Although a petitioning company must demonstrate that "[t]elecommunications services are available for resale in accordance with the requirement of sections 251(c)(4) and 252(d)(3)," Verizon admits in its filing that CLECs lack access to approximately 12 percent of its residential lines. To encourage Verizon to continue to open its residential markets, the 32 percent promotional discount should apply until CLECs obtain access to 100 percent of Verizon's residential lines.

Finally, Verizon's application fails the public interest prong of the Act's three-part test. The record lacks assurances that the residential resale market will remain open after a grant of authority, or that approval will foster competition in this market – factors that the Commission has considered when evaluating prior applications for Section 271 authority.

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COMMENTS OF
NATIONAL ALEC ASSOCIATION/PREPAID COMMUNICATIONS ASSOCIATION

The National ALEC Association/Prepaid Communications Association ("NALA/PCA") hereby files these comments on the above-captioned application of Verizon New Jersey et al. ("Verizon") to provide in-region, interLATA services in the State of New Jersey. As discussed below, Verizon has failed to demonstrate both that it has fully complied with the fourteen-point "Competitive Checklist" and that the requested authorization is consistent with the public interest, convenience and necessity.[1] Accordingly, the Commission should deny the application.

I. Background and Introduction

NALA/PCA is a trade association comprised of companies that since 1996 have been providing prepaid local telephone service to hundreds of thousands of residential consumers nationwide.[2] NALA/PCA members' core customers are those that historically have been

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1 *See* 47 U.S.C. § 271(d)(3)(A), (C).

2 In addition to service providers, NALA/PCA members include a wide range of companies that support the prepaid local services industry. NALA/PCA has been an active

considered high-risk – due, for example, to a poor credit history or lack of sufficient identification – and thus unable to obtain local telephone service from incumbent carriers. For these consumers, prepaid local service may offer the only viable option for obtaining local telephone service, including access to 911 emergency services.

NALA/PCA members do not check credit histories or require security deposits. Instead, to minimize the risk associated with serving these consumers, NALA/PCA members require payment prior to providing service and typically limit access to long-distance, directory assistance, operator services, and other usage-based services for which the customer incurs charges in addition to the monthly service charge. In some jurisdictions, blocking is not available for all services or, if it is available, is cost-prohibitive. In order to provide their services, NALA/PCA members resell the flat-rate, local telephone services and custom calling features of incumbent local exchange carriers ("ILECs"), including Verizon.

The Commission has recognized that resale is an important entry strategy.[3] Although the Commission has begun de-emphasizing resale as a competitive entry strategy, it remains key to competition in the residential market and is expected to remain so for some time. To ensure the continuing viability of resale as both an entry strategy and a competitive alternative, it is critical

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participant in a number of Commission proceedings addressing the anticompetitive practices of the incumbent local exchange carriers.

[3] *See* First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, 15954 (Aug. 8, 1996) ("[I]n some areas and for some new entrants, we expect that the resale option will remain an important entry strategy over the longer term. Resale will also be an important entry strategy for small businesses that may lack capital to compete in the local exchange market by purchasing unbundled elements or by building their own networks.").

that the Commission in this proceeding respond to the concerns of resellers, including NALA/PCA Members, that have only limited resources with which to arbitrate or litigate at the state level. Ultimately, a Commission response that acknowledges and requires the correction of competitive disparities prior to the grant of Verizon's requested authority will promote competition and other public interest goals not only in New Jersey, but in those states in which Verizon has yet to obtain authority to provide in-region, interLATA services.

As explained below, the Commission should deny Verizon authority to provide in-region, interLATA services in New Jersey until such time as Verizon fully complies with its resale and operations support system ("OSS") obligations under the Telecommunications Act of 1996 ("1996 Act"), particularly as those obligations pertain to resale billing. Even if the Commission finds that Verizon has complied with these duties, it should deny Verizon's application on the grounds that a grant of authority at this time is premature and inconsistent with the public interest, convenience, and necessity.

II. *Checklist Item 2:* Verizon's application glosses over serious resale billing problems

A. Elements of Verizon's reported billing performance are substandard and its performance in other key areas is not even measured

To satisfy Item 2 of the Competitive Checklist, Verizon must demonstrate that it is providing non-discriminatory access to specific network elements in accordance with the requirements of Sections 251(c)(2) and 252(d)(1).[4] Requisite network elements include OSS, one aspect of which is the incumbent's billing systems.

4 *See* 47 U.S.C. § 271(c)(2)(B)(ii).

Verizon's OSS Declaration refers to the eight separate performance measurements associated with billing and states that "Verizon NJ's billing performance has been strong in each of these areas." Verizon OSS Declaration at ¶ 145.[5] Closer scrutiny reveals that the statement is not supported by the data. For example, in each of the three months reported for metric 6-0, Percent Completeness of Usage Charges, Verizon reports substandard performance; in no reported month did Verizon demonstrate a satisfactory performance. Four of the reported eight metrics exclude charges for post-completion discrepancies ("PCDs"), thereby skewing the results. And although timeliness is reported as "+" for each of the three months, the timeliness of those bills satisfies only the 10 business-day standard established in the performance metrics. *See* Verizon Measurements Declaration, Attachment 404, Checklist Item 1: UNE OSS, BI, p. 4.[6]

Significantly, there are no performance metrics associated with the timeliness of dispute acknowledgment and dispute resolution, another key area of reseller concern. Residential resellers find that as much as 20 percent of the charges listed on each Verizon wholesale bill are incorrect, a situation that has been aggravated by the inconsistent application of the 32% initial promotional discount to which Verizon agreed as part of its merger conditions.[7] Unfortunately,

5 *See* www.accessthefuture.net/vznj/271/OSS_Declaration/oss_declaration.htm

6 *See* www.accessthefuture.net/vznj/271. NALA/PCA supports a performance metric that would require the incumbent to deliver a wholesale bill to the CLEC within three days of the billing date. Such a benchmark would ensure that the CLEC has at least three working weeks, not two, in which to review the bill and attempt to resolve disputes prior to the payment deadline. *See Performance Measurements and Standards for Unbundled Network Elements and Interconnection,* CC Docket No. 01-318, Comments of National ALEC Association/Prepaid Communications Association at 8-9 (January 22, 2002).

7 *See Application of GTE Corp., Transferor, and Bell Atl. Corp., Transferee, for Consent to Transfer Control of Domestic and Int'l Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License,* 15 FCC Rcd 14032 (June 16, 2000).

Verizon's billing practices and procedures deprive resellers of adequate time to scrutinize their bills and attempt to resolve billing disputes prior to payment deadlines. Further, NALA/PCA Members have encountered significant difficulties in attempting to resolve their billing disputes with Verizon. Disputed charges linger for months – in some cases, years – without resolution. Verizon seemingly will not devote sufficient resources to resolve these disputes and has refused to engage in meaningful negotiations, costing NALA/PCA Members hundreds of thousand of dollars and hundreds of hours of employee time. seriously hampering their ability to compete against Verizon in the local exchange market.

B. Verizon is creating new areas of billing concern for resellers

Verizon states that it "has greatly reduced and, in some cases, virtually eliminated principal areas of earlier CLEC concern, including misapplied taxes, standalone accounts, IXC and Directory advertising charges," Verizon OSS Declaration at ¶ 140. Verizon, however, fails to note the remaining areas of concern that remain unresolved and the new concerns it has created, including the substantial charges it imposes upon resellers for blocking services. For example, Verizon charges NALA/PCA Members pay a one-time charge of $8.75 per customer and an additional monthly charge of $10.30 per line to block 10-10XXX, or casual calling, services.[8] The casual-calling block is only one of the 20 different types of blocks that Verizon identifies in its Order Business Rules, Version 4.8.1 (LSOG 4) (Release Date February 2002).[9]

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8 *See* Sprint Communications Co., L.P. v. CAT Communications International, Inc. (D. N.J. 2000), Civil No. 00-1492. Note that this charge is the subject of a complaint before the New Jersey Board of Public Utilities.

9 *Available at* http://128.11.40.241/east/business_rules/business_rules.htm

Verizon has recently instituted a policy requiring resellers to purchase certain blocks or face liability for casual calling, third-party, and collect charges incurred by their end-users. *See* Verizon Position on IntraLATA Calls, Collect and Third Number Calls (January 24, 2002).[10] Verizon's new policy is a transparent attempt to impermissibly shift the risks and costs associated with these services from the provisioning carrier to the local reseller. This policy strikes particularly hard at prepaid local service providers, who typically order local lines with a "PIC NONE" or "LPIC NONE" designation.

Although it would require resellers to purchase a number of blocks, Verizon expressly disclaims responsibility for the effectiveness of the blocks it provides. For example, it admits its toll billing exception screening services will not block international operator-assisted calls, calls from operator service providers, or calls from interexchange carriers that have not "opted to participate" in Verizon's screening process. It also admits that the database which processes the screen may be unavailable at times. Thus, to the extent Verizon is enforcing its new policy, it is requiring prepaid local service providers to pay it for both admittedly ineffective blocking services and all calls that slip through. No entity operating in a competitive marketplace would be able to establish a comparable policy that rewards itself for its inefficiencies and failings. Verizon's attempts to impose this new policy demonstrate not only the monopoly power that Verizon continues to wield but that significant concerns exist with respect to the manner in which it treats and bills its resellers.

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10 http://128.11.40.241/east/wholesale/resources/2002_industry_letters/clec/012402.htm.

III. *Checklist Item 14:* Verizon fails to demonstrate meaningful competition in the residential resale market

Item 14 of the Competitive Checklist requires that the petitioning company demonstrate that "[t]elecommunications services are available for resale in accordance with the requirement of sections 251(c)(4) and 252(d)(3)."[11] Verizon has failed to make the requisite demonstration with respect to residential telecommunications services. In fact, its filing demonstrates that approximately 12% of residential lines are *not* available for resale, as required by the 1996 Act.

According to ARMIS reports, as of 2001 Verizon served 4,235,373 residential lines in New Jersey.[12] It cannot be determined from Verizon's filing how many residential customers are served by competitors. Verizon states only that "[a]s of June 2001, CLECs had access to 88.8% of Verizon NJ's residential access lines." Verizon NJ Checklist Declaration at ¶ 75.[13] Verizon's admission that CLECs lack access to almost 12% of its residential access lines undermines its glowing depictions of an open market. If the market were as fully opened to competition as Verizon claims, then CLECs would have access to 100% of Verizon's NJ residential access lines.

Given the nascent state of residential resale competition, Verizon's assertions regarding its superior performance on resale should be viewed critically by the Commission when evaluating the state of the residential resale marketplace. Until such time as Verizon's residential markets are fully opened to competition – that is, until 100 percent of the residential access lines

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11 47 U.S.C. § 271(c)(2)(B)(xiv).

12 *See* Automated Reporting Management Information System ("ARMIS") Report 43-08, Table III, *Access Lines in Service by Customer*. *Available at* www.fcc.gov/ccb/armis.

13 *See* www.accessthefuture.net/vznj/271/Checklist_Declaration/checklist_declaration.htm.

are available to CLECs – Verizon should be ordered to continue providing the 32 percent promotional discount applicable to resold residential service.

IV. Approval of Verizon's application is premature and inconsistent with the public interest, convenience and necessity

A grant of approval under Section 271 entails satisfaction of a three-part test. Separate from determining whether Verizon satisfies the competitive checklist and will comply with Section 272, Congress directed the Commission to assess whether the requested authorization would be consistent with the public interest, convenience and necessity.[14]

While compliance with the checklist is a "strong indicator" that authorization is consistent with the public interest, "the public interest requirement is independent of the statutory checklist and, under normal canons of statutory construction, requires an independent determination."[15] In evaluating public interest considerations, the Commission has looked to factors such as "unusual circumstances that would make entry contrary to the public interest under the particular circumstances of the application. (Footnote omitted.) Another factor that could be relevant . . . is whether [the Commission has] sufficient assurances that markets will remain open after grant of the application."[16] The public interest analysis may include

14 *See* 47 U.S.C. § 271(d)(3)(C).

15 Memorandum Opinion and Order, *In the Matter of the Joint Application of SBC Communications, Inc. et al for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, FCC 01-29 (rel. Jan. 22, 2001) at ¶¶ 266-267.

16 *Id.* at ¶ 267.

consideration of "whether approval . . . will foster competition in *all* relevant telecommunications markets."[17]

Such factors are present in the instant case. The record does not demonstrate that competition in the New Jersey residential resale market has taken root. Indeed, the record establishes that approximately 11.2% of the residential market lacks any competitive alternative to Verizon because Verizon has not yet provided CLECs access to these lines.

Approval is likely to *erode* the small competitive gains that have been made in that part of the residential market that is available to competitors. Until recently, high UNE prices in New Jersey discouraged the provision of facilities-based service to residential consumers. As a result, the primary source of New Jersey's nascent residential resale competition has been derived from resale, particularly the provision of prepaid local service. Competitors that have gained a toehold find that they are now being economically squeezed, *inter alia,* by Verizon's failure to negotiate billing disputes and its insistence on the purchase of ineffectual blocking services at inflated prices. Rather than foster competition in the residential market, approval of Verizon's application risks competitive gains because it will encourage further anti-competitive behavior on Verizon's part. A premature grant of authority to provide in-region, interLATA services virtually eliminates regulators' remaining leverage to ensure Verizon's continuing compliance with the statutory requirements of Sections 251 and 252.

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17 *Id.* at Footnote 822.

Conclusion

The Commission should not authorize Verizon New Jersey, Inc. et al. to provide in-region interLATA services in New Jersey until such time as Verizon can fully demonstrate its compliance with all 14 items of the Competitive Checklist, particularly Items 2 and 14. Further, the Commission should conclude that a grant of the requested authority is premature and inconsistent with the public interest, convenience and necessity at this time.

Therefore, based on the foregoing, NALA/PCA urges the Commission to deny Verizon's application for authority to provide in-region interLATA services in New Jersey.

Respectfully submitted,

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April 8, 2002

CERTIFICATE OF SERVICE

I, Sylvia Davis, a secretary with the law firm of Shaw Pittman L.L.P., hereby certify that on this, the 8th day of April 2002, I served a true copy of the foregoing **Comments of National ALEC Association/Prepaid Communications Association** by hand delivery upon the following:

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